

1)
On Convention
Assembly Chamber State Capitol
Sacramento
uesday Oct 29th 1878

Convention met pursuant
to adjournment

President Hoge in the Chair

Roll called and the
following Members
were present—

2)

Roll-Call of Delegates to the Constitutional Convention, 1878.

NAMES.	Ayes	Noes	NAMES.	Ayes	Noes	NAMES.	Ayes	Noes	NAMES.	Ayes	Noes
ANDREWS	1		FAWCETT	2		LAVIGNE	6		SHOEMAKER	1	
AYERS	2		FILCHER	3		LEWIS	7		SHURTLEFF	2	
BARBOUR	3		FINNEY	4		LINDOW	8		SMITH	3	
BARNES			FREEMAN			MANSFIELD	9		<small>of Santa Clara.</small> SMITH	4	
BARRY	4		FREUD	5		MARTIN	10		<small>of Fourth District.</small> SMITH	5	
BARTON	5		GARVEY	6		<small>of Alameda.</small> MARTIN			<small>of San Francisco.</small> SMITH	6	
BEERSTECHER	1		GLASSCOCK	7		<small>of Santa Cruz.</small> McCALLUM	1		SOULE	7	
BELCHER	6		GORMAN	8		McCOMAS	2		STEDMAN	8	
BELL	7		GRACE	9		McCONNELL	3		STEELE	9	
BERRY			GRAVES	40		McCOY	4		STEVENSON	10	
BIGGS	8		GREGG	1		McFARLAND	5		STRONG	11	
BLACKMER	124		HAGER			McNUTT	6		STUART	11	
BOGGS	9		HALE			MILLER	7		SWEASEY		
BOUCHER	10		HALL	2		MILLS	8		SWENSON	1	
BROWN	1		HARRISON	3		MOFFAT	9		SWING	2	
BURT	2		HARVEY	4		MORELAND	80		TERRY	3	
CAMPBELL	3		HEISKELL	5		MORSE	1		THOMPSON	4	
CAPLES	1		HEROLD	6		MURPHY	2		TINNIN	5	
CASSERLY	4		HERRINGTON	7		NASON	3		TOWNSEND		
CHAPMAN	5		HILBORN	8		NELSON	4		TULLY		
CHARLES	6		HITCHCOCK	9		NEUNABER	5		TURNER	6	
CONDON	7		HOLMES			NOEL	6		TUTTLE	7	
COWDEN	8		HOWARD	50		O'DONNELL	7		VACQUEREL	8	
CROSS			HUESTIS	1		OHLEYER	1		VAN DYKE	9	
CROUCH	9		HUGHEY	2		O'SULLIVAN	8		VAN VOORHIES	120	
DAVIS	20		HUNTER	3		OVERTON	9		WALKER	1	
DEAN	1		INMAN	4		PORTER	90		<small>of Marin.</small> WALKER	2	
DOWLING	2		JOHNSON	5		PROUTY	1		<small>of Tuolumne.</small> WALKER	3	
DOYLE	2		JONES	6		PULLIAM	2		WATERS	4	
DUDLEY	4		JOYCE	7		REDDY	3		WEBSTER	5	
<small>of San Joaquin and Amador.</small> DUDLEY	5		KELLY	8		REED	4		WELLER	6	
<small>of Solano.</small> DUNLAP	6		KENNY	9		REYNOLDS			WELLIN	7	
EAGON	134		KEYS	60		RHODES	5		WEST		
EDGERTON	7		KLEINE	1		RINGGOLD	6		WICKES	8	
ESTEY	8		LAINÉ	2		ROLFE	7		WHITE	9	
<small>of Contra Costa and Marin.</small> ESTEE	9		LAMPSON	3		SHELL	8		<small>of Tehama.</small> WILSON	130	
<small>of First District.</small> EVEY	30		LARKIN	4		SCHOMP	9		<small>of First District.</small> WILSON	1	
FARRELL	1		LARUE	5		SHAFTER	100		WINANS	2	
									WYATT	3	
									MR. PRESIDENT		

AYES.....
NOES.....

3)

Messrs of Strong and Holmes
were granted indefinite leave
of absence on account of sickness

Journal of yesterday read
and approved.

Petitions

Mr. Beerstecher presented
a petition for the exemption
from taxation, certain property
of the deaf and dumb.

Referred to the com-
mittee on Revenue and Tax-
ation

Reports

By Mr. Larkin

Mr President
 Your Committee on Privileges
 and Elections report as follows

That Proposition No 16 introduced
 by Mr Johnson be indefinitely
 postponed

Also Proposition No 88 be referred
 to Committee on Executive
 Department

And that Propositions Nos 108 by
 Mr Grace 199 by Mr Freeman
 be referred to the committee
 on Suffrage

And that No 210 by Mr Lindero
 be referred to its author for
 segregation

Larkin
 Chairman

~~Reported~~

Report received.
~~Discussed in~~ and the several
 propositions referred as recom-
 mended.

3) Proposed amendments were presented and referred as follows:

By Mrs. Rely No 434

Amendment of Section
31 of art- IV

Referred to Committee on City,
County and Township Organization

By Mrs. Eves No 435

Relating to officers

Referred to the Committee on
Legislative Department.

also No 436

6) To exempt Public Highways of the state from taxation

To the Committee on Revenue and Taxation

By Mrs. Smith of Santa Clara, No. 437

Regulating the rights of Land owners in overflowed lands

To the Committee on Agriculture, Manufactures and Commerce

By Mr. Dooling, No. 438

Relating to San Francisco

To the Committee on City, County and Township organization

By Mrs. Herington No 439

Relating to Revenue and
Taxation

To the Committee on Revenue
and Taxation

By Mrs. Boyle, No 440

Relating to Public School
Teachers

To the Committee on
Education

Also 441

To establish a Board
of Public Works for the
City and County of San Francisco

To the Committee on
Legislative Department

By Mrs. Shaffus, No 442

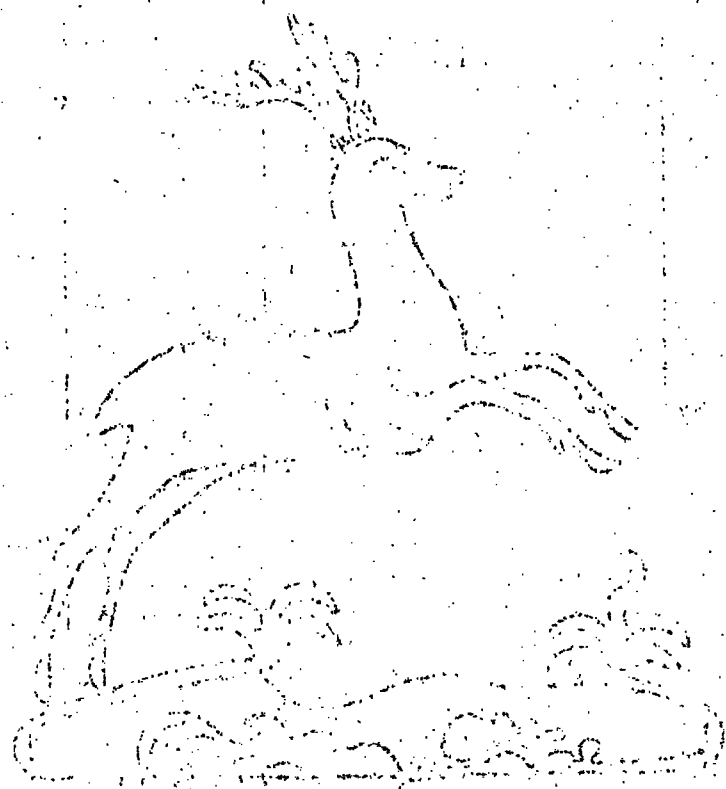
To amend article X of
the Constitution

To the Committee on
Judiciary and Judicial
Department

By Mr. Howard, No 443
In relation to arrests and attach-
ments for debt

To the Committee on Leg-
islative Department

9) Mrs. Burstons rose to a question
of privilege and presented the
following paper.



Mr President

In the Constitutional Convention on Friday October 25th 1878, on the question of the eligibility of the Hon Eugene Fawcett to a seat in the Convention. Mr Vaquerel spoke as follows:

"There is not one delegate of San Francisco here that has not violated his oath to the party - and that is prior to the oath he took in this Hall. If these gentlemen will remember the oath they have taken in San Francisco they will remember that it says they will not vote for or support anybody who has not affiliated with the Workingmen party."

On the same speech Mr Vaquerel refers to me personally.

"I held the reports of one of the sessions of this Convention, and what do I find - "that no right is denied unless the right of the will of the people." we also desire to have the rights of the people recognized."

Now when I see gentlemen on this floor that have sustained these principles go right against

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it today etc."

Mr Vaguerd
in making the above statements
in open Convention committed
a gross error, and was
wholly mistaken as to every
portion of his statements —
I desire to show ^{on a question of marriage} that no
oath or pledge was ever
taken of the nature and
effect as stated by Mr
Vaguerd, and that the
workingman party is not
bound by an oath, nor
are the delegates thereof.
Nor by a pledge in the
manner stated.

Oct-29th 1878

Beestick

The President decided it to be ~~a subject for~~ in order when Mrs. Brewster proceeded to speak at length.

Mrs. Vagueville rose to a question ^{of Rights} in reply to Mrs. Brewster.

Special Order

At ten o'clock and fifty minutes A.M. the Convention ~~proceeded~~ ^{took up} the Special Order, being the following report from the Committee on Preamble and Bill of Rights

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13.

REPORT.

MR. PRESIDENT: The Committee on Preamble and Bill of Rights beg leave to report that they have had under consideration, for a number of sessions, the subject matter referred to them, and, having agreed upon a draft for a Preamble and Declaration of Rights, submit the same herewith to the Convention for its consideration.

At the outset of their deliberations, the committee adopted the plan to take up, in their order, the preamble and different sections of article one of the present Constitution, and consider the same as a basis for their action, with the understanding that only such provisions should be altered or amended as the public interest seemed to demand. Acting upon this plan, the committee first informally considered and acted upon the old preamble and separate sections of article one, seriatim, in connection with the various propositions bearing thereon which have from time to time been referred to us by the Convention. Afterwards the committee went over the work again, in the same manner, for final action.

PREAMBLE.

It being the opinion of the committee that the substance and general style of the present preamble should be preserved, they have reported the same, with only slight verbal amendment, as the preamble for the new Constitution. It expresses in brief and appropriate language the people's gratitude to the Supreme Being for their freedom, and their desire and determination to secure and perpetuate its blessings by the establishment of a constitutional government. This is all that seems to be required, without loading it down with unnecessary recitals.

DECLARATION OF RIGHTS.

SECTIONS 1-2. Sections one and two, of article one, have been retained with the same numbers in the new article, without any alteration. The former declares the inalienable rights of man, and the latter the object and purposes of government, in a manner and style that cannot well be improved.

SEC. 3. Section three of the old article, relating to the right of trial by jury, has been materially changed. There were a large number of propositions referred to the committee, having in view some modification of the jury system, and, after giving them due consideration and devoting considerable time to the subject, the committee agreed upon the section as reported, which has been inserted in the place of the old section seven, immediately preceding the sec-

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tion relating to the grand jury, and numbered accordingly. As section three of the article here reported, the committee have adopted a new section which recognizes the Constitution of the United States as the paramount law of the land.

SEC. 4. Section four, in reference to the free exercise and enjoyment of religious profession and worship, has been retained, with the insertion of the words "or juror," after the word "witness," in the sentence, "and no person shall be rendered incompetent as a witness on account of his opinions on matters of religious belief."

A number of memorials, quite numerous signed, having in view some modification of, or addition to, what is contained in section four, have been referred to us. A representative of the clergy also favored the committee with a brief statement of the reasons assigned by a large class of our people for desiring such changes. But after giving to the subject-matter all the consideration its importance demanded, the committee, with all deference to the memorialists, still remain of the opinion that it would be unwise to materially alter or add to the section as it stands in the old Constitution.

SEC. 5. Section five, relating to the writ of habeas corpus, remains as in the original article.

SECS. 6-7. Sections six and seven, in addition to the declaration in the former against excessive fines, cruel and unusual punishments, and the unnecessary detention of witnesses, bear upon the same subject, namely, the matter of bail. The committee, therefore, have transposed and consolidated these sections, and have added, by way of amendment to the clause relating to detaining witnesses, a prohibition against confining them in jails or rooms where criminals are usually imprisoned. At present it not unfrequently happens that a stranger or poor person, so unfortunate as to witness the commission of a crime, for want of bail is confined in some noisome prison cell, while the criminal, more blessed in the possession of friends or property, goes at large on bail.

SEC. 7. For section seven, as already stated, we have inserted the old section three as amended. As thus amended, the right of a jury in criminal trials is still retained, but in cases not amounting to felony the Legislature may fix the number to constitute such jury, and in all civil cases the whole matter is left to be provided by law.

SEC. 8. Section eight has been divided so as to form, with the amendments proposed, three sections. The portion relating to the grand jury forms the eighth section of the new article. As amended, it provides for a grand jury in cases punishable by death, or imprisonment in the State Prison, with the usual exceptions, and in other criminal cases permits a prosecution by information or complaint, as may be prescribed by law. It also provides that while the grand jury is retained, two-thirds may find a true bill, thereby making it more difficult to defeat action against influential parties, than under the old system. Power is also conferred upon the Legislature, by a two-thirds vote of all the members elected to each House, to abolish and restore the whole grand jury system. In regard to the grand jury as well as the trial jury, the action of the committee may not have been as radical as the public sentiment demands, judging from the various propositions before them bearing upon the subject; but, if so, there is a degree of elasticity in the new system which the old did not possess, and the Legislature, guided by experience, will be enabled to meet the wants of the people in this respect.

SEC. 9. Section nine, declaring the right of freedom of speech and of the press, and prescribing a rule in criminal prosecutions for libel, has been retained as it existed in the old article.

SEC. 10. Section ten, declaring the right of the people freely to assemble together to consult for the common good, etc., has also been retained.

The committee, after duly considering the subject-matter of the two foregoing sections, came to the conclusion that it would be unwise to propose amendments to them, or to tamper with them in any respect. Their provisions have been construed, and are well understood, and it is hazardous to make experiments in such matters.

SEC. 11. Section eleven, declaring that all laws of a general nature shall have a uniform operation, is retained.

SEC. 12. Section twelve, providing that the military shall be subordinate to the civil power, etc., has been amended by striking out the last clause, which limits an appropriation for army purposes, as that matter is covered by section twenty-two of the present article, added by way of amendment in eighteen hundred and sixty-six and eighteen hundred and seventy-one; and the latter section has also been left out of our draft, on the ground that it belongs more properly to the Legislative Article. To section twelve, as thus amended, we have added section thirteen of the old article, as it bears upon the same matter of restricting the military power.

SEC. 13. Section thirteen has been provided for by inserting in the place of the old section, already disposed of, that portion of the old section eight, in regard to the right of the accused in a criminal trial, and has been amended. The amendment consists in adding certain other usually enumerated rights, mostly taken from article six of the amendments to the Constitution of the United States, and which seem to have been omitted from that portion of the old section eight. We have also altered the clause in regard to putting a person twice in jeopardy, so as to remove any doubt, in case a jury on the trial should, for any reason, be discharged without rendering a verdict.

SEC. 14. The committee struck out the old section of this number, relating to apportionment, as it more properly belongs to the Committee on Apportionment and Representation. The committee have constructed a new section on the subject-matter of the last clause in the old section eight—that is, taking private property for public uses. In the section as reported in our draft for section fourteen, it is provided that the time or services of the citizen, when required for the public, shall also be compensated in a manner to be provided by law. It may be that the labor of an individual is his only capital or means of support, and when his time or services shall be required for the public benefit there appears to be no reason why compensation should not be made the same as when private property is taken.

SEC. 15. Section fifteen prohibits imprisonment for debt, except in cases of fraud, and prohibits imprisonment for a militia fine. It has been retained in its place without alteration.

SEC. 16. Section sixteen, declaring against ex post facto laws and laws impairing the obligation of contracts, has been so amended as to prevent impairing the remedy for the enforcement or breach of a contract.

SEC. 17. Section seventeen, in regard to the right of foreign resi-

dents to possess, enjoy, and inherit property, has been amended so as to exclude from its provisions foreigners not eligible to become citizens.

SEC. 18. Section eighteen, prohibiting slavery and involuntary servitude, has been so amended as to read: "No form of slavery shall ever exist in this State, and there shall be no involuntary servitude, except for the punishment of crime of which the party shall have been duly convicted."

SEC. 19. Section nineteen, relative to the right of the people to be secure from unreasonable seizures and searches, is retained without amendment.

SEC. 20. Section twenty, in regard to treason, and the rights of a person on trial charged with the same, remains intact.

SEC. 21. Section twenty-one, declaring that this enumeration of rights shall not be construed to impair or deny others retained by the people, was the last section of the original article, and we have retained it as the last in our draft, and changed the number accordingly. In its place, as section twenty-one, we have inserted a new section declaring against special privileges and immunities. Several propositions were referred to us bearing upon this subject, and many of the Constitutions of other States contain similar provisions.

SEC. 22. The present section of this number added by amendment, as already stated, has been dropped from our draft as properly belonging to another article. The committee have prepared a new section to take the place of twenty-two, declaring against appropriations or grants to any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State. Judging from the various propositions on this subject, there would seem to be a public demand for some provision of this kind, in order to prevent the funds and property of the State from being diverted and used for other than public purposes.

SEC. 23. Section twenty-three is a new section, in which it is declared that the provisions of the new Constitution, unless when declared to be otherwise, shall be mandatory and prohibitory. The purpose of this is, that where plain language is used in the Constitution, declaring what shall be done and what shall not be done, it must not be construed, in convenient cases, to be merely directory. This section has also been presented in deference to what seems to be a public demand for something of the kind.

SEC. 24. This is the last section in the new article, and, as already stated, is the same as the twenty-first, or last section, in the original article.

Several other new sections were proposed before the committee, but failed of adoption—some for the reason that they were considered unnecessary or inappropriate, and others for the reason, simply, that they more properly belonged to some other department.

Herewith the committee returns to the Convention various memorials and propositions bearing upon the matters under consideration, up to this time, referred to them, and would recommend that so much of any or all the provisions contained therein as may not be embodied in the draft herewith submitted be not adopted.

All of which is respectfully submitted.

WALTER VAN DYKE, *Chairman.*

MINORITY REPORT.

Mr. President and Gentlemen of the Convention:

We, the undersigned, minority of your Committee on Preamble and Bill of Rights, beg leave to report the following two additional sections for insertion in the Bill of Rights of the new Constitution:

SECTION. — No property qualification shall ever be required for any person to vote, hold office, or become a juror.

SEC. — The penalty for all crimes, except petty misdemeanors, shall be imprisonment, which shall be proportioned to the character and degree of the offense.

J. RICHARD FREUD,
JAMES N. BARTON,
CHAS. S. RINGGOLD,
A. E. NOEL.

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The Secretary then ~~proceeded~~
to read the following ~~draft~~
reported by the Committee
being Amendment No 402

DISCONTINUED

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DRAFT FOR PREAMBLE AND DECLARATION OF RIGHTS.

PREAMBLE.

We, the People of the State of California, grateful to Almighty God
2 for our freedom, in order to secure and perpetuate its blessings, do establish
3 this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. All men are by nature free and independent, and have
2 certain inalienable rights, among which are those of enjoying and defend-
3 ing life and liberty; acquiring, possessing, and protecting property; and pur-
4 suing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is
2 instituted for the protection, security, and benefit of the people, and they have
3 the right to alter or reform the same whenever the public good may require it.

SEC. 3. We recognize the Constitution of the United States of
2 America as the great charter of our liberties, and the paramount law of
3 the land.

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SEC. 4. The free exercise and enjoyment of religious profession and
2 worship, without discrimination or preference, shall forever be allowed in this
3 State; and no person shall be rendered incompetent to be a witness or juror
4 on account of his opinions on matters of religious belief; but the liberty of
5 conscience hereby secured shall not be so construed as to excuse acts of licen-
6 tiousness, or justify practices inconsistent with the peace or safety of this
7 State.

SEC. 5. The privilege of the writ of habeas corpus shall not be sus-
2 pended unless when, in cases of rebellion or invasion, the public safety may
3 require its suspension.

SEC. 6. All persons shall be bailable by sufficient sureties, unless for
2 capital offenses when the proof is evident or the presumption great. Exces-
3 sive bail shall not be required, nor excessive fines imposed; nor shall cruel
4 or unusual punishments be inflicted; nor shall witnesses be unreasonably
5 detained, or confined in any jail or room where criminals are usually impris-
6 oned.

SEC. 7. In criminal cases the right of trial by jury shall remain. In
2 all cases, except felony, the Legislature may provide by law the number nec-
3 essary to constitute a jury, and in all civil cases the number necessary to
4 render a verdict.

SEC. 8. No person shall be held to answer for a crime, or other public
2 offense, punishable by death or imprisonment in the State Prison (except in
3 cases of impeachment, and in cases of militia when in actual service, and in
4 the land or naval forces in time of war, or which this State may keep with
5 the consent of Congress in time of peace), unless on presentment or indict-
6 ment of a grand jury. In all other cases, offenses shall be prosecuted by

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7 indictment, information, accusation, or complaint, as concurrent remedies, as
8 may be prescribed by law. A grand jury shall consist of not less than fifteen
9 nor more than eighteen persons, two-thirds of whom may find an indictment
10 or true bill. The Legislature, by a two-thirds vote of all the members elected
11 to each House, may abolish and restore the grand jury system to its

SEC. 9. Every citizen may freely speak, write, and publish his senti-
2 ments on all subjects, being responsible for the abuse of that right; and no
3 law shall be passed to restrain or abridge the liberty of speech or of the press.
4 In all criminal prosecutions on indictments for libels, the truth may be given
5 in evidence to the jury; and if it shall appear to the jury that the matter
6 charged as libelous is true, and was published with good motives and for
7 justifiable ends, the party shall be acquitted; and the jury shall have the right
8 to determine the law and the fact.

SEC. 10. The people shall have the right to freely assemble together
2 to consult for the common good, to instruct their Representatives, and to peti-
3 tion the Legislature for redress of grievances.

SEC. 11. All laws of a general nature shall have a uniform operation.

SEC. 12. The military shall be subordinate to the civil power. No
2 standing army shall be kept up by this State in time of peace, and no soldier
3 shall, in time of peace, be quartered in any house without the consent of the
4 owner; nor in time of war, except in the manner to be prescribed by law.

SEC. 13. In criminal prosecutions in any Court whatever, the party
2 accused shall have the right to a speedy and public trial; to appear and
3 defend in person and with counsel; to demand the nature and cause of the
4 accusation, and to have a copy thereof; to meet the witnesses face to face, and

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5 to have process to compel the attendance of witnesses in his behalf. No per
6 son, after having been once acquitted by a jury, or discharged by the Court
7 shall again be put in jeopardy for the same offense; nor shall he be compelled
8 in any criminal case, to be a witness against himself, nor be deprived of life
9 liberty, or property, without due process of law.

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11 SEC. 14. Private property shall not be taken or damaged for public
12 use, without just compensation having been made to or paid into Court for
13 the owner, except in cases of war, riot, fire, or great public peril; in which
14 cases compensation shall afterwards be made; such compensation or damages
15 to be assessed by a jury, unless waived by the parties; nor shall the time of
16 service of any person, except when held or under arrest for crime, be taken
17 without just compensation to be fixed and provided by law.

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19 SEC. 15. No person shall be imprisoned for debt in any civil action
20 on mesne or final process, unless in cases of fraud; and no person shall be
21 imprisoned for a militia fine in time of peace.

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23 SEC. 16. No bill of attainder, ex post facto law, or law impairing the
24 obligation of contracts, or the remedy for the enforcement or breach thereof,
25 shall ever be passed.

26
27 SEC. 17. Foreigners eligible to become citizens of the United States
28 under the naturalization laws thereof, while bona fide residents of this State,
29 shall have the same rights in respect to the possession, enjoyment, and inher-
30 itance of property as native born-citizens.

31
32 SEC. 18. No form of slavery shall ever exist in this State, and there
33 shall be no involuntary servitude unless for the punishment of crimes of which
34 the party shall have been duly convicted.

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SEC. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

SEC. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid or comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open Court.

SEC. 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

SEC. 22. No money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State; nor shall any grant or donation of property ever be made thereto by the State.

SEC. 23. The provisions of this Constitution are mandatory and prohibitory, unless by express words it is declared to be otherwise.

SEC. 24. This enumeration of rights shall not be construed to impair or deny others retained by the people.

on motion of Mr. Sinner the
Convention resolved itself into
Committee of the whole. Mr
President in the Chair to
consider the foregoing
Amendment - No 402

at 12^{o'clock} P.M. the Committee
rose and reported progress

on motion of Mr. Howard
at twelve o'clock and then
minutes P.M. the Convention
adjourned

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10/29/78



Oct. 29